IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.858 OF 2004

Alaknanda Gopalkrushna Badale & Ors. ...Petitioners.
Vs.
Ramugra Ramcharitra Tiwari. ...Respondent.

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Mr. P.N. Joshi for the Petitioners.
Mr. R.G. Ketkar for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

July 6, 2006.

P.C.

The Petitioners are the landlords, while the Respondent is a tenant of the suit premises consisting of one room admeasuring 16' x 18', a room which is described as a press room admeasuring 27' x 16' and one room beneath the stair-case admeasuring 5' x 3.1/2'. The Petitioners filed a suit for eviction against the Respondent, on the ground of default in the payment of rent and on the ground that the premises were reasonably and bona fide required for their own use and occupation. Evidence was adduced. The Trial Court in the course of its judgment dealt with the issue of bona fide requirement. P.W. 1 in his Examination-in-Chief stated that the family of the landlords are in possession of

one room each in Crss N1-54 and 55; that there are ten members in the family of the landlords. The Trial Court rejected the plea of the landlords on the ground that a suit for eviction ought to have been filed against all the tenants. The approach of the Trial Judge was flawed. The next ground which weighed with the Trial Court was that while a notice of eviction was issued on 13th September 1982 and the suit came to be filed on 8th January 1986. Now it cannot be held as an invariable rule that every delay in the institution of the suit will disentitle the landlord to a decree of eviction even if it is established before the Court that the landlord needs the premises reasonably and bona fide for his own use and occupation. Undoubtedly, in a particular case, the delay may be of such an order or in such circumstances as to reflect on the want of bona fides but that cannot be an inflexible rule. Each case has to be resolved on the basis of evidence on the record. The Trial Court proceeded on the basis that delay in instituting the suit by itself disentitled the landlords to relief. That approach is unsustainable.

In my view, it is necessary that the entire evidence is appreciated afresh by the Additional District Judge, and a fresh

order is passed after hearing the parties. Accordingly, the impugned judgment and order dated 19th July 2002 is quashed and set aside. Civil Appeal No.70 of 1993 shall stand restored to the file of the Additional District Judge, Malegaon for a decision afresh after the parties are heard. Parties are directed to appear before the Additional District Judge, Malegaon on 7th August 2006 for receiving directions. The Additional District Judge, Malegaon, will endeavour to dispose of the appeal within four months. All the rights and contentions of the parties are kept open. The Appellate Court shall take a decision on the merits of the case without regarding the present order as conclusive on the question as to whether the landlords have established their requirement for the premises. It may also be clarified that this petition was pressed only in so far as the issue of bona fide requirement is concerned and that issue will be considered by the Additional District Judge on remand. The Petition is accordingly disposed of.

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